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PLEASURE BOATING AND HAMILTON HARBOUR

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*With the research assistance of Steven Obermeyer. Appreciation is expressed to a number of public officials who commented on a draft report.

Executive Summary

(1) This is the fourth Occasional Report from the Copps Chair at McMaster University, and the third concerned with Hamilton Harbour.

(2) The report describes the law, the economics and the scope of pleasure boating in Hamilton Harbour as one of the three major uses of this natural resource. The others are commercial shipping and navigation, and waste disposal.

(3) The legal description is drawn from Occasional Report No. 2, Legal Foundations for the Uses of Hamilton Harbour, and emphasizes how commercial shipping and navigation is accorded legal paramountcy among uses, and how pleasure boaters and recreationists have highly attenuated property rights of access and use of the waters of the Bay.

(4) The facilities and moorages available to pleasure boaters are described at length, and it is suggested that sufficient rental facilities may exist (at current prices) but that insufficient private ownership of slip facilities may exist.

(5) Nevertheless, it is estimated that the magnitude of pleasure boating is large, comprising some 265,000 annual boating opportunities for sailing and motor boating alone (excluding opportunities for canoeing, kayaking, rowing and sailboarding). This generates some $9 million in total income and 800 person years of employment in the region. It is also estimated however, that over $14 million in total income and some 1300 person year jobs are lost because pleasure boaters in the region prefer not to use the Bay for recreation.

(6) The substantial size of these economic opportunities foregone is, it is suggested, associated with the lesser priority placed by public agencies on pleasure boating compared with alternative uses, especially waste disposal. It may also be associated with costs of access to the Hamilton Waterfront compared with alternative sites, and the relative travel times by water from a Hamilton moorage compared with a Lake Ontario moorage to the open waters of the Lake.

(7) Both a radical and modest recommendation are made to redress the balance of priorities amongst uses, the latter consisting of Pleasure Boating Council with membership from the owners of all types of craft and from marina interests. The Council would help to organize a largely unorganized group and would lobby public agencies to redress the current accommodation amongst uses. One or more of a number of public agencies could take the lead and help organize the proposed Council, perhaps based in part on existing club membership in the Harbour marinas.

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PART I

Institutional Arrangements for Pleasure Boating

Hamilton Harbour is a natural resource used for a variety of activities. One set of activities, and arguably the most traditional set, is that of recreation. Since early settlement times, the Bay and its foreshores have been used for boating, ice-skating, walking, birdwatching, swimming and fishing.[1] In more recent decades, swimming has been prohibited because of pathogenic pollution in many parts of the Bay, while the sports fishery has been severly curtailed and limited to coarse warm water species as food sources and feeding areas have been eliminated by pollution and land-filling. Recent discoveries of cold water species in sections of the Bay and in the Springtime in particular may presage some changes in this use of the Bay.

These changes in recreational activities indicate that the Harbour is not simply a recreational site. The waters and foreshores of the Bay are used for shipping and docking, for waste disposal from industries and municipalities in the watershed, and for industrial, residential and institutional locations. Indeed, only 7% of the shoreline is currently classified as open space, and one-half of this is occupied by boating marinas.[2] Pleasure boating remains the major recreational activity for the multiple use Harbour.

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1. Mark Sproule-Jones., An Historical Profile of Hamilton and its Harbour, Copps Chair Occasional Report No. 3, McMaster University, Draft Copy, November 1985.

Pleasure boating is not simply a private recreational activity. The use and enjoyment of the waters of the Harbour is regulated and controlled by governmental agencies, in particular the Hamilton Harbour Commissioners. Access to the foreshores and to the water's edge is also highly regulated by government, including the City of Hamilton and the Hamilton Harbour Commissioners. Furthermore, pleasure boating, in quantity and quality, is influenced by governmental regulations on other interdependent uses of the Bay, especially on waste disposal and commercial shipping. Institutional arrangements -- the laws, regulations and organizations that formulate and implement these laws and regulations -- can thus determine the economic viability as well as the non-economic values of pleasure boating on the Bay. We must thus describe and assess these institutional arrangements before we can describe and assess the economic statistics of pleasure boating in Hamilton Harbour.

Constitutional Arrangements

The laws, regulations and agencies that manage pleasure boating in Hamilton Harbour derive their authority from the constitutional arrangements for Canada, especially from the Constitution Act of 1867 (formerly known as the British North American Act, 1867). By virtue of the Third Schedule (operated through Section 108) of this Act, the Canadian Government was granted authority to control shipping and navigation in "public harbours". Because of this element of the constitution, the common law right of free navigation for all ships and

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2. Hamilton Region Conservation Authority data, cited in Mark Sproule-Jones, Legal Foundations for the Uses of Hamilton Harbour, Copps Chair Occasional Report No. 2, McMaster University, April 1985, p.3.

vessels was superseded by any statutes passed by the Canadian Parliament.[3]

The authority of the Canadian Parliament over shipping and navigation is not as complete in the case of Hamilton Harbour as it is for many other public harbours. The Federal Crown possesses legislative jurisdiction over this use of a public harbour, but it does not possess proprietary jurisdiction. It does not, in itself, own the waters and bed of the Harbour. Proprietary jurisdiction is, since 1948, vested in the Hamilton Harbour Commissioners', a public corporation established by the Federal Government in 1911 (and described in more detail below). The history of this jurisdiction merits further attention.

On Confederation the Municipality of Hamilton owned the Harbour rather than the Province of Ontario. Section 108 of the Third Schedule of the Constitution Act of 1867 vested in the Federal Government merely "the public uses and property of each province enumerated". It did not vest the property of municipalities, even though municipalities are merely political entities created by provincial legislation.[4]

Confusion and uncertainty about proprietary jurisdiction over the waters and bed of the Harbour arose after 1912, when the Hamilton Harbour Commissioners' were established. The City, the Province and the Dominion all asserted jurisdictional claims. In 1948, these three parties agreed to grant the Commissioners' absolute title to the Bay. The City conveyed

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3. A fuller version of this and subsequent paragraphs on the constitutional and institutional arrangements for pleasure boating will be found in Sproule-Jones, ibid, especially Parts II and IV.

4. The precedent-setting case for all such harbours in Canada was R. v.St. John Gas Light Co. (1895), 4 Ex.C.R. 326, in which it was ruled that the harbour of St. John, New Brunswick did not vest in the Dominion by virtue of Section 108 of the British North American Act, 1867 [(U.K.), c.3, now the Constitution Act, 1867]

title to the Commissioners; the Province acknowledged the title of the waters and bed to the City by Order in Council; the Dominion also by Order in Council acknowledged that title was vested in the Hamilton Harbour Commissioners.[5]

Thus the authority of the Federal Crown is legislative rather than proprietary. It extends from three provisions of the Constitution Act, 1867. These take the form of jurisdiction over beacons, bouys and lighthouses; a specification that shipping lanes connecting a province with any other country is excluded from the jurisdiction of the provinces; and a main authority-creating provision which explicitly assigns legislative power over "shipping and navigation' to the Federal Government.[6]

The Provincial Crown possesses no proprietary authority over the Harbour waters, bed and foreshores since 1948. Its legislative jurisdiction is also limited as are its legislative powers delegated to the City.[7] The courts have declared the paramountcy of navigation over other Harbour uses, and thus the constitutional authority of the Province is highly circumscribed.[8] This is the case even though Section 92 of the Constitution Act, 1867 expressly granted the Province proprietary rights

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5. The Deed from the City was No. 148343NS, registered on 8 November 1948; the Province Order in Council 266/47 was passed on 13 February 1947; and Dominion Order in Council PC5427 was passed on 26 November 1948.

6. Constitution Act, 1867. S. 91 (9); S. 91 (10); S. 91 (12); Case law establishes that no proprietary right accrets to the Federal Government under these sections; Attorney General of Canada v. Attorney General of Ontario, 1898, AC700; Re Water and Water Powers 1929, SCR 100; R. v. Moss 1896, 26 SCR 322.

7. Hamilton Harbour Commissioners v. City of Hamilton et al. (1978), 91 D.L.R. (3rd), 353 at 376, 1 M.P.L.R. 133, 21 O.R. (2d) 459 (C.A.), 6 M.P.L.R.

8. Ireson v. Holt Timber Co. (1913), 30 O.L.R. 209; Elec. Development Co.

(Footnote continued)

over all public lands, (except those explicitly conveyed to the Dominion, such as public harbours) and granted the Province general legislative powers over "property and civil rights".[9]

The courts have used the common law doctrine of "navigable servitude", which dates from the time of the Magna Carta, to justify the paramountcy of shipping and navigation over all other uses of a public harbour and its foreshores. The courts have used part of Canada's unwritten constitutional tradition to choose between those parts of the Constitution Act which overlap and conflict in public harbours.[10] The actual institutional rather constitutional arrangements reflect this tradition.

Statutes, Regulations and Organizations

Pleasure boating on the water of Hamilton Harbour is thus subject to the legislative powers of the Federal Government, although moorage and

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(continued)
of Ontario v. A.G. Ontario (1917), 38 O.L.R. 383 [reversed (1919) A.C. 687 (P.C.)

9. Section 92 (5) and 92 (13) respectively. Section 92 (8) also granted the Provinces legislative power to create municipal corporations and convey on them powers of the Province including those affecting foreshore land uses.

10. Grand Trunk R. Co. of Canada v. A.-G. Can., (1896), A.C. 348; City of Montreal v. Montreal Street R. Co. (1912), 1 D.L.R. 681, A.C. 333, 13 C.R.C. 541. Hamilton Harbour Commissionars v. City of Hamilton et al, (1978), 91 D.L.R. (3rd) 353. The existence of concurrent or overlapping spheres of jurisdiction with respect to harbours was recognized in Re Sturmer and Town of Beaverton (1911), 24 O.L.R. 65 at 72:

> "The harbour may be, as a harbour, 'within the jurisdiction of the Canada;' but is none the less, for purposes within the ambit of provincial legislation, within the jurisdiction of the Province and its Legislatures, provincial and municipal."

access to the waters is more jurisdictionally complex.

The most important Federal statute is the Hamilton Harbour Commissioners' Act, 1912. The City of Hamilton, which retained proprietary ownership of the Harbour in 1867, invited the Dominion to administer the Harbour and its shoreline on its behalf. The 1912 Act was the official Dominion response.

The Hamilton Harbour Commissioners is a public corporation with powers to "hold, take, develop and administer on behalf of the City of Hamilton in the harbour as defined by this Act ... all property which may be placed under the jurisdiction of the Corporation".[11] The limits of the harbour as defined by the Act included all the waters of Burlington Bay, Royal Botanical Gardens, together with all the inlets (except for th. Burlington Ship Channel, which was to remain the express dominion of the Federal Department of Transport) and all waterfront property, water-lots, piers, docks, shores and beaches in and along the Bay. The only exception is the body of water known as Cootes Paradise which is legally owned by the Royal Botanical Gardens, a Provincial Crown Corporation.[12]

Like most public corporations, the Hamilton Harbour Commissioners' enjoy considerable autonomy from the Federal Government. The Federal Crown appoints two commissioners; the City of Hamilton appoints a third. Beyond this, the Commissioners' have authority to appoint and fix renumeration of their own personnel, borrow and spend, and acquire, own,

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11. Hamilton Harbour Commissioners' Act, S.C. 1912, C98 [amend. S.C. 1951, c.17, S.C. 1957-58, c.16] s.14(1) [the Act was not consolidated in the Revised Statutes of Canada, 1970].

12. The Royal Botanical Gardens received proprietary rights to Cootes Paradise through its 1941 Act, rights delegated by the Province of Ontario: See footnotes 6 and 8.

sell and lease land. They are within the limits of their Act, "masters in their own house".[13]

The Commissioners' pass their own by-laws which supplement the regulations of the Canada Shipping Act, 1970. Three sets of regulations are important for pleasure boats:

(i) Boating Protection Regulations. These establish requirements for signs, lights, fog-horns and life-buoys. They set restrictions on speeds and requirements for permits for regattas and races. Fines of up to $50 and imprisonment of up to 30 days are potential sanctions for compliance.

(ii) Pleasure Yachts Marking Order. This sets standards as to how registration numbers are to be displayed.

(iii) Small Vessels Regulations. These provide for registration of vessels and set detailed standards regarding required safety and navigation equipment. The 'rules of the road' and collision regulations are also described. Licencing of vessels that use the Harbour is no longer compulsory; the requirement was deleted when the Regional Municipality of Hamilton-Wentworth assumed responsibility for Harbour policing on the abolition of the Commissioners'

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13. Mr. Justice Griffiths, in decision of Hamilton Harbour Commissioners v. City of Hamilton, et al., op.cit., at 360.

own force in 1986.

The Commissioners are subject to the (Federal) Navigable Waters Protection Act, 1886. Under the Act, a person cannot construct a work in navigable waters without the approval of Transport Canada (the Coast Guard Branch)[14]; "work" is defined as including any bridge, boom, dam, wharf, dock, pier, tunnel, landfill or excavation of materials from the bed of navigable waters, that may interfere with navigation.[15] This approval must be obtained even if the work is constructed by riparian owners or the owner of a private water-lot, and even if it is far away from existing or potential shipping lanes. If any work is built without such approval, or not maintained as required, the work may be declared by the Minister as a public nuisance, and s/he may order it to be removed or destroyed, even if it has very great public benefit and is an obstruction in the slightest degree.[16] While any interference with the public right of navigation can also be declared a nuisance by a court of law (which can then order it abated), it can do so notwithstanding any approval of the Minister of Transport under Section 5 of the Act.[17] Thus, if a party that obstructs navigation does so under the statutory authority of the Minister, s/he is immune from any and all court actions that might be launched by other

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14. Navigable Waters Protection Act, R.S.C. 1970, c.N-19, s.5(1).

15. Ibid, s.3.

16. Ibid, s.6(1); Stephens and Mathias v. Macmillan (1954), O.R. 133: high wires strung over navigable water which did not directly impede navigation were nevertheless held to be a public nuisance under the terms of the Act.

17. A.G. Canada v. A's G. Ontario, Quebec, and Nova Scotia, op.cit.: the Judicial Committee of the Privy Council also held that the Act gives the Governor-in-Council the statutory authority to permit the erection of what would otherwise be a common law nuisance in navigable waters.

affected parties.

Finally, moorage and access to moorage facilities involves not simply the Harbour Commissioners but also the City of Hamilton.

The powers of the City to regulate foreshores stem from the Planning Act (S.O., 1983, Ch. 1) and the Municipal Act (R.S.O., 1983, Ch. 302). Under Section 34 of the Planning Act, the City is authorized to prohibit or regulate the use of all lands and improvements in the municipality subject to the approval of the Ontario Municipal Board (a Provincial tribunal). This Act does not require the City to establish recreational foreshore uses, although there is a general common law principle that municipalities have a duty to advance the common interests of its residents (and these common interests could be recreational).[18] The Municipal Act also provides that the City and Regional Municipality of Hamilton-Wentworth can, at their discretion, acquire land for and establish public parks.[19]

The City of Hamilton has used the powers vested in it by the Planning Act to create By-law 6593, which was passed on 25 July 1950, and revised on several occasions since. This is a general zoning by-law which according to its preamble is intended to "Prohibit Certain Uses of Land, Buildings and Structures and to Regulate the Height, Bulk, Location, Spacing, Character and Use of Buildings and Structures in the City of

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18. Re Howard and Toronto (1928), 61 O.L.R. Leitch v. Strathroy (1923), 53 O.L.R. 655 at 669; Re Foxcroft and London (1928), 61 O.L.R. 553 at 556; Eastview v. Episcopal Corp. of Ottawa (1918), 44 O.L.R. 284 at 297; Re Labute and Tilbury North (1918), 44 O.L.R. 522 at 528 (C.A.); Upper Canada College v. Toronto (1910), 22 O.L.R. 178 at 179 (C.A.); Re Hassard and Hamilton (1907), O.W.R. 731 at 733.

19. Municipal Act, (R.S.O., Sec. 208, par. 51-53) and Regional Act (R.S.O., 1980, Ch. 437, Sec. 155).

Hamilton". The territorial application of By-law 6593 is defined in Section 3(1) as follows:

> Save as in this section otherwise provided, the provisions of this By-law shall apply throughout the various districts of the City of Hamilton as shown in the various maps appended to and forming part of this by-law, and to the adjoining shores of Hamilton Harbour, Cootes Paradise and Lake Ontario, including land covered by water wherever there is or may be erected any jetty, boathouse, pier or other building or structure.

Thus the by-law is intended to include all parts of Hamilton Harbour including those areas under the jurisdiction of the Hamilton Harbour Commissioners. The Commissioners' have their own Land Use Development by-law and both parties attempt to merge their concerns within the two documents. The by-law of the City specifically exempts public parkland managed and controlled by another government body from the operation of the by-law. This is intended to exclude the lands of the Conservation Authority from the terms of the by-law.

The Hamilton Regional Conservation Authority is mandated to conserve, restore, develop and manage the lands within their respective watersheds, but these do not include Hamilton Harbour itself.[20] This Conservation Authority, which is a Provincial Crown Corporation with a regional board of directors, thus has power to acquire and develop parkland that may, in turn, have indirect impact on Harbour waters.

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20. Conservation Authorities Act, R.S.O. 1970, c.78.

The Hamilton Harbour Commissioners', which is a Federal corporation, also have regulatory power over the foreshore by virtue of its enabling Act. Section 15(1) implies that the Commissioners may regulate and control the use and development of all land and property on the Harbour foreshores. The courts established in 1978 some general principles to resolve these cases of concurrent jurisdiction over land uses for the Harbour. The City of Hamilton, pursuant to Section 34 of the Planning Act, can validly pass zoning by-laws affecting land use within the harbour so long as it does not explicitly attempt to prohibit or regulate the use of land for purposes related to shipping and navigation. Similarly, the Harbour Commissioners can validly pass by-laws to regulate and control the use and development of land within the Harbour for purposes related to navigation and shipping. Only if conflict arises with respect to the use of a parcel of land within the limits of the Harbour would the paramountcy of Federal power cause the operation of the by-law of the City to be suspended, because the Federal Government occupies the paramount field of shipping and navigation.[21] These same general principles were used by the courts to limit the authority of the Conservation Authorities to regulate infilling of the Harbour.[22]

In short, access from the land to pleasure boating on the waters of the Harbour depends on riparian ownership of the foreshores. The use and enjoyment of the waters for pleasure boating is possible only with the approval of the Hamilton Harbour Commissioners'. The Commissioners derive

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21. Hamilton Harbour Commissioners v. City of Hamilton et al, op.cit., 378.

22. R. v. Hamilton Harbour Commission, 1977, 7 C.E.L.N., Ont. 130.

this authority from the special constitutional status accorded to shipping and navigation, from their proprietary jurisdiction, and from the court determinations of the priorities to be given to statutes and regulations of different levels of government.

Property Rights and Institutions

The previous description of constitutional arrangements, and the statutes, regulations and organizations that derive their bases from the constitutional arrangements, suggest that both ownership and control of the waters of the Harbour are in govermental hands. The users of the resource, such as pleasure boaters, possess no "property rights" in the use and enjoyment of the waters. They can possess some property rights in the moorage facilities -- purchase of some of the wharfage space is possible, as we shall see below -- as well as in land abutting the Harbour, but without rights to use and enjoy the waters themselves, these specific property rights can be highly attenuated.

When users of a resource do not possess well defined, enforced and transferable property rights to a resource, they face uncertainties that they will be able to continue to enjoy the same stream of benefits over the long run. They may be excluded from certain areas in the future, for example, because of increasing congestion from commercial shipping traffic. As a result, they are less likely to engage in long run commitments to use the Harbour rather than lakes and pleasure boating sites where they may possess less attenuated rights of access and moorage.

In addition, when users of a resource do not possess well defined, enforced and transferable property rights to a resource, they are unable to engage in negotiation with other users of the resource (such as waste

disposal or commercial shippers) and must rely on the fiduciary interests of governmental agencies to advance their interests. This creates additional uncertainty as to whether other users will have greater priority in the long run. In historical terms, government agencies have placed a low priority on water quality in the Bay and hence on many recreational uses of the Bay.[23]

Thirdly, when access, use and enjoyment of a resource are allocated by governmental regulations, there is an incentive for users to organize and press their claims before government to maintain or increase the value of their own uses. This phenomenon is known as "rent-seeking". However, in the multiple use case, the amount of rent-seeking engaged in by one set of users is unlikely to parallel the amount engaged in by other sets. Where there are a large number of persons involved or potentially involved in a use, such as pleasure boating, they are unlikely to be as well organized as when the number of persons are smaller and cohesive. There is always a tendency for some "free riders" in large groups. We should suspect, therefore, that a use like pleasure boating will be accorded a lesser priority than uses like commercial shipping.

What is important to note about these tendencies is that it is the property right structure that creates and intensifies their directions. The institutional arrangements are incentive systems that yield economic consequences. It is not the people involved in the processes of management, but the management processes themselves that create the

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23. Sproule-Jones, An Historical Profile ..., op. cit. The relationship between water quality and recreational boating is not as direct as between water quality and some other forms of recreation, like swimming or fishing.

consequences. We should suspect, given the institutional arrangements for managing pleasure boating on the Harbour, that the value and magnitude of boating is small. We might also expect that there is relatively little public information on the value and magnitude of pleasure boating; no-one agency has sufficient incentive to generate the information to be used in multiple use negotiations. We might also suspect that pleasure boating is accorded a limited role in inter-agency negotiations about uses. None of these consequences would suggest efficient allocations amongst the uses of the Harbour.[24] We will, first, describe moorage and boating facilities in the Harbour and then assess some of the economic consequences of the property rights and management structures for pleasure boating on the Bay.

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24. Mark Sproule-Jones and Patricia L. Richards, "Toward a Theory of the Regulated Environment", Canadian Public Policy, Vol. 10, 1984, pp. 305-15. The theory of property rights and their consequencies for efficient allocation of multiple uses will be the subject of future Copps Chair Reports.

PART II

Moorage Description and Facilities

Hamilton Harbour is home for six marinas, with the total number of slips amounting to 681. This represents an increase of 75% since 1974-76 when 390 boat slips existed in the Bay.[25] Table I documents the number of slips, wet moorings, dry moorings and boat ramps available for pleasure boating at the two publicly owned and four private marinas.

The number of slips and berths available for boaters in the Harbour is not an accurate indicator of the number of vessels that use the Harbour during the open season. It excludes those craft that are put in and taken out of the water on a daily basis, especially canoes and sail-boards. None of the marinas indicate plans or room for expansion, however, with the exception of the publicly owned facility of the Hamilton Harbour Commissioners' which has room for moorings but not for slips.

The City of Hamilton has approved plans in 1985, but without funding, for an expansion of moorage facilities on the so-called "Lax Property" on the south-west of the Bay.[26] Up to 40 additional moorings would be made available to the Macassa Bay Yacht Club and between 180 and 220 Moorings would be made available for a commercial marina. The plans also envisage a windsurfing rental concession, an additional boat ramp with adjacent temporary moorings for craft launched at this ramp, a tour boat

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25. Public Works Canada, Design and Construction Ontario Region, Preliminary Engineering Study of Marina Facilities in Hamilton Harbour, Government of Canada, February 1976, Table 1.

26. Coombes, Kirkland, Berridge and Associates, Hamilton Waterfront Master Plan, Corporation of the City of Hamilton, September 1985.

Table I: Moorage Facilities - 1985

Marina	Slips	Wet Moorings	Dry Moorings	Boat Ramps
Hamilton Harbour Commissioners[1]	231	210	0	1
La Salle Marina	219	(Included in the 210 belonging to HHC)[2]	0	2[6]
Leander Boat Club	0	0	Sculling Facilities[4]	0
Macassa Bay Yacht Club	100	0	0	0
S. Macdonald Marine Services	50	2	0	0
Hamilton Yacht Club, 1888	81	Unlimited[3]	155[5]	1[7]
TOTAL	681	212+	155+	4

Notes:
1. Public marina operated by the Harbour Commissioners.
2. 160 excluding the 50 included in the HHC total.
3. No present constraints due to congestion.
4. Rental facilities available.
5. Includes 120 storage facilities and 35 laser facilities.
6. One public ramp plus one run by boat club.
7. Boat winch.

deck, and a 1,000 foot wharf for transient berthage. The plans for increased slips, as opposed to the other boating changes, are based on unreliable estimates. The plan underestimates the existing number of slips by 402, and recommends an increase of up to 260 new moorings.[27] There may well be opportunities for transient berths however. Transient berthage is discouraged under current private club operations; the clubs require a 48 hour reciprocal ticket whereby a visiting party tying up at a host marina obligates the visiter's home club to reciprocate.

The number of pleasure boating facilities on the Harbour may be constrained by land access. Map I shows existing marina locations on the Bay. All but one are located in the same region of the Harbour and are accessable only through a road system designed for neighbourhood residential trips. The capital costs of offsite road improvements for the "Lax Property" plan -- which would also improve access to the five marinas in question -- are estimated at $1.6 million. This provides one crude indicator of the cost of developing access channels for pleasure boaters on the Bay.

New commercial marinas on the Harbour are unlikely, therefore, without public investment in improved access and public subsidies for capital construction. Two sets of indicators reinforce this interpretation of the plans of the City to increase moorage on the Bay.

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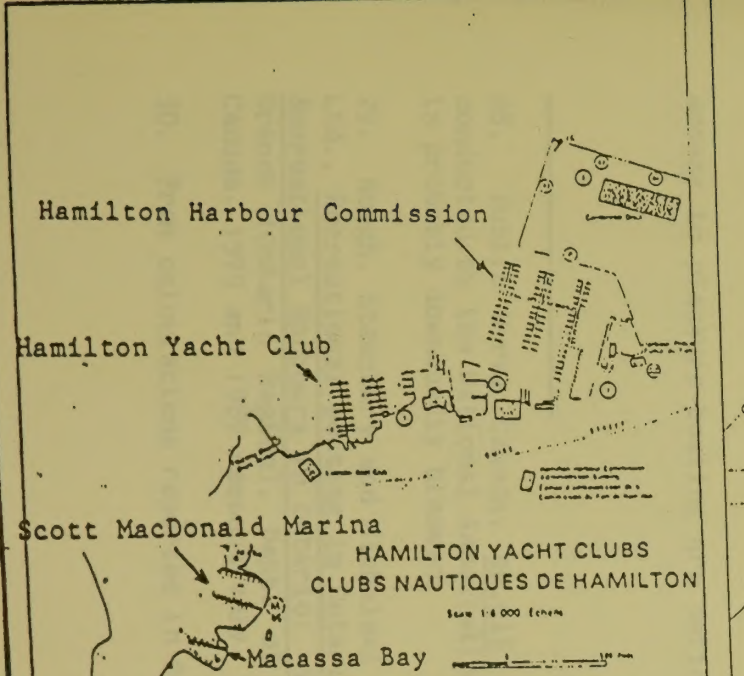
27. The Economic Planning Group of Canada, Hamilton Waterfront Development Study: Phase II, Preliminary Market and Economic Impact, June 1985, pp. 15-17.



Pleasure Boating Facilities in Hamilton Harbour.

Adapted From A Map By the Surveys and Mapping Branch
Department of Energy Mines and Resources

First, as Table II indicates, most marinas do not have waiting lists for berthage, and the largest marina (the publicly owned marina of the Commissioners) reported a surplus of slips for larger vessels until 1986. Second, the estimated net earnings, before taxes and financial charges, for commercial marinas on the Great Lakes is only 9%.[28] This suggests that commercial marinas rely on public subsidies for capital construction, such as is available under the Fishing and Recreational Harbours Act 1977-78 of the Federal Government.[29]

A final feature of moorage facilities available in the Harbour must be emphasized. Commercial marinas do not appear to be able to capture a large proportion of the expenditures of boaters on pleasure boating without public subsidies of capital costs and access. Revenue per slip per annum averages only $622 in terms of rental and maintenance costs, or some $4 per day for a typical season of 160 days. This is less than 10% of the annual direct expenditures on boating by owners who use the Bay.[30] However, boat owners themselves appear prepared to own rather than to rent slips. Table II indicates that a substantial market in this commercial asset exists at La Salle Park. In this case, the property rights of access to pleasure boating are defined, enforced and transferable by boat

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28. Public Works Canada, op.cit. The estimate is based on a survey conducted by the National Association of Engine and Boat Manufacturers and is probably downwardly biassed.

29. Hough, Stansbury and Michalski Ltd. and Jack B. Ellis and Associates Ltd., Recreational Boating in Ontario: An Update to 1985 and Program for Recreational Harbours in Ontario: Volume 1, Part 1, Small Craft Harbours Branch (Ontario Region), Dept. of Fisheries and Oceans, Government of Canada, 1979 and 1985 respectively.

30. From calculations reported in Part III below.

Table II: Sufficiency and Availability of Moorage - 1985

Marinas	Waiting Lists	Memberships/Access
Hamilton Harbour Commissioners	None Slips for large craft available in 1985. 210 wet moorings available for purchse at $470., but these include 160 at LaSalle Park.	No memberships necessary.
La Salle Park	Waiting List[2] 219 slips available for purchase at average price of $4800.[3]	No memberships. Operated by Burlington Sailing and Boat Club.
Macassa Bay Yacht Club	5 year waiting list for active membership.	Social membership of 150 at $20 required before active membership of 100 at $50 per annum.
S. Macdonald Marine Services	None	No memberships necessary.
Hamilton Yacht Club, 1888	None	Variety of memberships available for purchase. A resident membership includes $1000 initiation fee; $690 annual fee; $600 club fee.

Notes:
1. Excludes Leander Boat Club.
2. Size is unavailable.
3. Price increase 10% per annum under current policy, hence occasional vacancies occur.

owners themselves and appear to be a more efficient mechanism for allocating moorage opportunities than commercial or public marinas made possible only through large scale subsidization.[31]

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31. The property arrangements at La Salle Park are not completely transferable; resale must be made to the Burlington Boat Club at an administered price 10% per annum above the sale price. Subsidies for capital construction of recreational facilities from the Small Craft Harbours Branch alone amounted to $1.5 million in Ontario in 1978-79. See Program for Recreational Harbours, op.cit., p.99.

PART III

The Value and Magnitude of Pleasure Boating

Pleasure boating is not, by definition, a commercial activity. Once a boat is purchased, rented or leased, and access to the water is secured at either private or public expense, the benefits of boating are non-market in nature. The value of pleasure boating to the participants is not signalled or indicated by dollar signs. Use of the waters of Hamilton Harbour or Lake Ontario is not sold on the market, and the recreational, aesthetic and sports fishing benefits of pleasure boating are not easily calculable. This is not, of course, to deny that pleasure boating generates economic consequences for marina operators, manufacturers of boats and equipment, and the owners of facilities like restaurants and tackle shops that derive "secondary" benefits from boaters.

A number of economic techniques exist for estimating the value and magnitude of pleasure boating in the absence of market indicators.[32] While few economists would claim that they yield perfectly accurate calculations, they do, on the other hand, give an approximation of the extent of the benefits associated with this form of recreation.[33] What is important to note in the context of Hamilton Harbour is that no one boater

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32. See especially, Robert F. Goodwin, Recreational Boating in Washington's Coastal Zone, Institute of Marine Studies, University of Washington, 1982; P. Eby and Associates, Recreational Boating Facility Requirements to 1985 in British Columbia, Small Craft Harbors Branch, Pacific Region, 1979; and footnote 28, supra.

33. Mark Sproule-Jones, "The Social Appropriateness of Water Quality
(Footnote continued)

or boating organization has an incentive to undertake the calculations or to use these calculations to negotiate improved recreational status for the Harbour. As a consequence, recreation and pleasure boating in particular enjoy a subsidiary role in the Harbour, and the other two major uses (for commercial shipping and waste disposal) enjoy disproportionate benefits from the standpoint of efficient resource allocation. Again, one of the consequences of the limited property rights for pleasure boating in the Harbour is economic inefficiency.

Because no data exist on the value and magnitude of pleasure boating in the Harbour, we report in this section our own calculations. We were unable to survey boaters to calculate directly the actual number of users on the waters on any one day, and then to survey boaters about their own estimates of the benefits they derive from this type of recreation. This would have been preferable especially to estimate certain attributes of pleasure boating, like the "quality" of the boating experience or their willingness to pay for using Harbour waters. Instead we derived many of our estimates from census data and data obtained from marina operators using the economic methodology of the Ontario Recreational Boating Studies of 1979 and 1985 both of which excluded Hamilton Harbour.[34] This has the key advantage of allowing us to compare the economic value of pleasure boating in Hamilton Harbour with what we should expect the value to be if

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(continued)
Management", Canadian Public Administration, Vol. 21, 1978, pp. 176-194; and Sproule-Jones, "Institutions, Constitutions and Public Policies", in M.M. Atkinson and M.A. Chandler (eds), Canadian Public Policy: A Comparative Approach, University of Toronto Press, 1983, pp. 127-150.

34. Supra, footnote 28. Hereafter cited as Recreational Boating Studies (RBS).

Hamilton approximated Province wide values. In such a fashion we can make some inferences about the performance of the governance system for this use of Hamilton Harbour, and how far this performance falls short of expected Ontario-wide norms.

The Magnitude of Boating

The boating season for the Harbour runs from April to mid November in terms of the "first-in" and "last-out" boat. This season is approximately 240 days which is twice the Ontario average season of 120 days.[35] Most of the boating occurs between the Victoria Day and Thanksgiving Day holidays, and in many of our calculations we use the season length of 160 days. (We exclude ice boating from our analysis.)

In Table III, we display a variety of estimates of the number of boats of various kinds that use the Harbour or are resident within the Census Metropolitan Area. The range of over 300% indicates that some of these estimates are unreliable.

We provide a more reliable estimate of the extent of boating on Hamilton Harbour. It is the number of boating opportunities made possible by existing moorage and ramp facilities in the Bay. The R.B.S. calculate that moorage and ramp facilities make possible a specified number of opportunities for boating in any one day, and that an annual calculation is subject to the length of the season and socio-economic constraints on boating (as recreational uses cannot be spread evenly over the number of days of the week). We calculate the number of boating opportunities made

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35. R.B.S. 1979, p. 13.

Table III: Estimates of Boating Numbers 1985

Source of Data	Boat Estimation	Comments
Canada Customs Licensing Division	52,000	Hamilton Metropolitan Area Estimate.
Hamilton Harbour Commissioners' Police Force	32,000	Some 1701 vessels complied with registration requirements of HHC Bylaws. Estimated at 75% of total.
Estimated from Statistics Canada Data on Family Expenditure by Household Income	22,930	Adjusted to fit income earners of 15 years and above in Hamilton CMA.
Estimated from Statistics Canada Data on Family Expenditure by Homeowners or Rental Status.	15,243	Adjusted to fit tenure status in Hamilton CMA.

possible by existing facilities in the Harbour, using a season length of 160 days and a socio-economic constraint factor of 0.5[36]. We discover that 264,480 boating opportunities exist each year on Hamilton Harbour, or 1,653 opportunities on an averaged daily basis.

The Boating Industry

The Hamilton Harbour watershed is home to a variety of boating businesses. We estimate that a total of 33 private and public enterprises are engaged in marina operations, boat building and repairs, boat sales, boat transportation, boat excursions, boating instruction and boat rentals

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36. The ratio between facilities and opportunities is that of an Ontario wide average, namely 3.5 opportunities/day/slip or wet berth, and 62.5 opportunities/day/ramp. Season length is 160 days rather than the 120 days for Ontario as a whole, and the constraint factor of 0.5 corresponds to Province-wide estimates.

and charters. (Table IV)

Table IV: Number of Boating Businesses, 1985

	Number
Marinas	6
Boat Builders and Repairs	9
Boat Dealers	9
Boat Transporters	1
Boat Excursions	1
Boat Instructors	5
Boats - Rental and Charter	2
Total	33

Source: Bell Canada, Regional Municipality of Hamilton-Wentworth, Burlington and Surrounding Area, Directory; Comments from the Hamilton Harbour Commissioners'.

Not all of the craft that are associated with these businesses use the Harbour itself, so we confine our analysis of the size of the boating industry to the marina operators resident on the Harbour shores. In Table V, we indicate the size of marina operations by calculating the moorage revenues of the 5 major marinas on the Harbour (we exclude the Leander Boat Club). These revenues represent the primary as opposed to the secondary expenditures associated with moorage on the Harbour. Secondary expenditures would include club memberships, restaurant expenditures, expenditures on tackle and so on that are generated from primary expenditures on boats and moorage. It is worth noting that expenditures on the rent and maintenance of moorings amount to only 27% of total expenditures on moorings once capital sales of moorings are included.

This again suggests the importance of the acquisition of property rights in moorages to the boat owner.

Table V: Moorage Expenditures, 1985

Marinas	Rental and Maintenance	Capital Sales	Total
Hamilton Harbour Commissioners	250,199	98,700	348,899
La Salle Park	43,800	1,051,200	1,095,000
Macassa Bay Yacht	20,000	Nil	20,000
S. Macdonald Marine Services	37,500	Nil	37,500
Hamilton Yacht Club, 1888	71,425[1]	Nil	71,425
Totals	422,924	1,149,900	1,572,824

Note: 1 Includes storage.

Economic Impact

The previous figures would suggest that recreational boating in the Harbour is a very small economic activity. However, expenditures on moorage represent a small proportion of the expenditures of boaters. It is possible to estimate the full economic impact of pleasure boating made possible in the Harbour by using standard economic techniques. Our estimates are, in fact, downwardly biased because we do not include canoeing, kayaking or windsurfing; we confine our estimates to sailing and motor-boating. The reason that canoeing, kayaking and windsurfing are excluded is tht no data exist on their magnitude of use in the Harbour and their magnitude cannot be estimated from the number of slips and ramps

existing in the Harbour.

The basis for the calculations is the number, 264,480, which is the number of annual boating opportunities made possible by the existing facilities in the Harbour.[37] As Table VI indicates, the facilities in the Harbour contribute almost $9 million into the economy and lead to the employment of almost 800 persons.

Table VI: Economic Impact of Sailing and Motorboating, 1985

Economic Indicator	Totals
Direct Expenditure[1]	3,033,585.6
Total Economic Output[2]	7,098,590.3
Income Generated[3]	8,873,237.9
Direct Employment[4]	285.7
Indirect Employment[5]	505.7
Total Employment	791.4

Notes

1. Estimated at $11.47 per occasion. The concept of occasion is defined in the next section. All multipliers are the same as R.B.S., 1985, pp. 16-18, and are chosen for comparability purposes. They are drawn from the Ontario Ministry of Industry and Tourism, The Economic Impact of Tourism in Ontario and Region, 1984.
2. Economic output is total regional output necessary to produce the direct expenditures. Multiplier of 2.34.
3. Value of regional wages, salaries and profits. Multiplier of 1.25.
4. 32.2 person years per $1 million of expenditures.
5. Multiplier of 1.77.

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37. Supra, p. 24.

Comparative Performance

In many ways, Hamilton Harbour is unlike any other Harbour on Lake Ontario. Its uses have grown in response to socio-economic demands within the watershed, and its location, geological and biological structures have been subject to frequent man-made interventions.[38] It is unwise to compare its activities with other harbours, such as Toronto, which have grown and responded to a partially different set of socio-economic demands. This is particularly the case for recreational boating, where it is estimated that approximately $37 million of income and 2,700 person years of employment are generated by Toronto Harbour in responding to a market area population of 2.6 million persons.[39]

It is possible to assess the scope of pleasure boating in Hamilton Harbour, however, by comparing current economic impacts and facilities with what should be the economic inputs and facilities were residents in the watershed to use the Harbour in proportion with how Ontario residents use their adjacent waterways.

Some methodological procedures should be detailed in order to clarify the comparative assessment.

(1) The Ontario Recreational Survey, which remains the only comprehensive study of the characteristics and behaviours of recreationists, estimates that 4.1 is the annual per capita participation rate in

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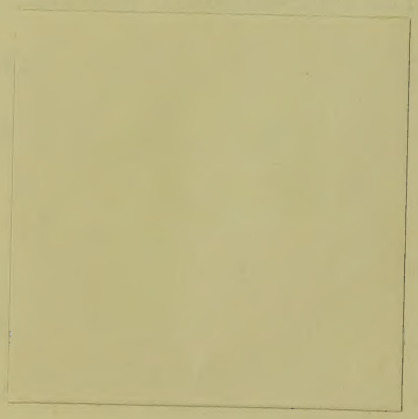
38. Sproule-Jones, An Historical Profile ..., op. cit.

39. Calculated on the basis of facilities, using the same season length, opportunities per type of facility, constraints on opportunities, and multipliers as used in our previous calculations for Hamilton Harbour. See Johnson, Sustronk, Weinstein and Associates, The Metropolitan Toronto Waterfront Boating Demand Study Update, Metropolian Toronto and Region Conservation Authority, 1985, pps. 15, 26, 53.



boating of all kinds for mid sized population centres (100,000 - 499,999 persons). We applied this rate to the population of the Hamilton Census Metropolitan Area that was 12 years and over.[40]

(2) These calculations yielded a figure of 1,855,557.5 occasions which we define as Hamilton's participation in pleasure boating at least once during a year. We deflated this figure by one-third, by using the Province wide standard that one-third of all boating occasions are satisfied out of the area in question.[41]

(3) We then further deflated this figure of 1,237,038 occasions by 56.2% which is the Province wide proportion of boating occasions satisfied by motor boating and sailing rather than by canoeing, kayaking and rowing.

(4) We finally applied the same parameters and multipliers as were used in Table VI to yield a performance standard from which to assess the sailing and motor boating uses of the Harbour.

Our calculations reveal some significant findings about the management of rpleasure boating in the Bay. (See Table VII) The opportunity costs associated with current motor boating and sailing facilities, access and usage in the Harbour varies from almost $5 million of direct expenditures to $14 million of lost watershed income. Over 450 person years of direct employment is foregone, and almost 1300 person years could be generated in

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40. Data Sources: Tourism and Outdoor Recreation Planning Study Committee, Ontario Recreation Survey, 1977-79, Government of Ontario, Vol. 2, p. 107; Statistics Canada, 1981 Census of Canada: Population ... Selected Chracteristics, Ministry of Supply and Services, 1982, p.5-1.

41. R.B.S., 1979, op.cit., p.37.

Table VII: Comparative Performance Indicators

Indicators	Expected Performance	Actual Performance[1]	Deficit[2]
Direct Expenditure	$ 7,945,742.7	3,033,585.6	4,912,157.1
Total Economic Output	18,593,307	7,098,590.3	11,494,717.7
Income Generated	23,241,633	8,873,237.9	14,368,395.1
Direct Employment	748.4	285.1	462.7
Indirect Employment	1324.7	505.7	819.0
Total Employment	2073.1	791.4	1281.7

Notes

1. From Table VI.
2. Expected Performance minus Actual Performance.

the watershed from enhanced motor boating and sailing. In fact, we estimate that a potential recreational industry worth $14 million alone in direct expenditures is available for capture by appropriate Harbour facilities, access and pleasurable conditions for boating. This figure includes canoeing, rowing and kayaking, as well as sailing and motorboating. This figure would merely bring the Harbour into equivalence with Ontario-wide norms. (Table VIII) Such a standard would require, inter alia, the construction and maintenance of 1529 slips or 86 ramps or some combination of both. Because of probable congestion with commercial shipping and navigation, it is doubtful that all of these facilities could be feasibly constructed and maintained.

Table VIII: Indicators of Potential Boating Performance: All Vessels

Direct Expenditure	$14,188,826
Economic Output	33,201,853
Income Generated	41,502,316
Direct Employment	1336
Indirect Employment	2365.4
Total Employment	3701.4

Reasons for Performance Inadequacies

It is beyond the scope of this present paper to assess the precise contributions that a variety of institutional practices may have on the inadequate performance of Hamilton Harbour in accumulating significant opportunity costs for recreational boating. It is worth noting, however, that those opportunity costs have existed for well over a decade. In 1974, the Halton-Wentworth Waterfront study suggested that potential demand existed for an additional 6,000 slips before 1990.[42]

The opportunities foregone are, nevertheless, a predictable consequence of the property rights system for managing the multiple uses of the Bay. First the recreationist possesses no property rights in the use and enjoyment of the waters of Hamilton Harbour or of most access points to this body of water. They must rely on the fiduciary interests of governmental agencies to bargain for their interests, and these interests have not commanded high political priority partly because of the

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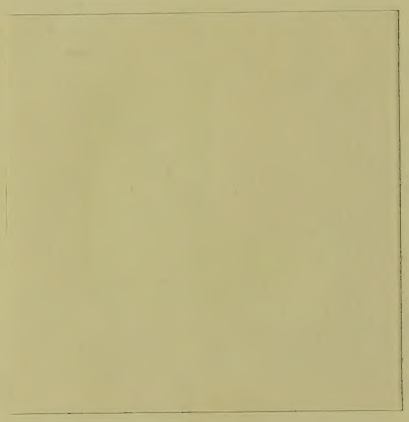
42. Acres Consulting Services Ltd., The Halton-Wentworth Waterfront Study, 1974, Vol. 2, 16.



diffuse unorganized nature of pleasure boaters.[43]

Second, even if recreation were a paramount interest of governmental authorities, the courts have determined, on the basis of a medieval practice of Anglo-Saxon politics, that commercial shipping and navigation has priority over recreational boating. The Hamilton Harbour Commissioners articulate this priority succinctly in their Port Master Plan (currently rescinded pending approval of City zoning proposals):

> "First and foremost, increased trade and development at the port through commercial shipping shall be promoted."[44]

Third, and probably most important, governments in the past have accorded priority to the use of the waters to waste disposal rather than recreation interests. The result is severe degredation of the waters and the Harbour bed. While dissolved oxygen levels have increased, and pathogenic pollution has improved in the Northern and Westernly areas of the Harbour, the waters still compare unfavourably with Lake Ontario and its rival boating opportunities. In historical terms, the management of waste disposal has taken place in ignorance of the associated foregone opportunities for pleasure boating in the Bay. As suggested earlier, the inadequacies of the property rights system for recreation in the Harbour can lead to management processes that yield large scale economic costs.

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43. Clubs are an exception, and much of the current facilities in the Bay are organized and maintained through boating clubs.

44. The Planistics Group, Hamilton Harbour Master Plan, 1978, p.8.

PART IV: CONCLUSION

Like most natural resource sites, Hamilton Harbour sustains multiple uses that may be compatible or may be in conflict. The uses of the Harbour for commercial shipping and navigation and for waste disposal are largely compatible. The uses of the Harbour for waste disposal and many forms of recreation are largely in conflict, as is extensive pleasure boating with commercial shipping when congested waters occur. The task of successful management of a natural resource site is to balance and accommodate these uses and to ensure that the values of any one use are in proportion to the values associated with all other uses.[45]

A management system for balancing and accommodating compatible and conflictual uses of a natural resource site is only possible if the institutional arrangements for efficient management are established by governments and the courts. The laws, regulations, and property rights accorded to public agencies and users of the natural resource must be appropriately designed if efficient management is to ensue.

The findings of this Report suggest deficiencies in the laws, regulations and property rights for the management of recreation in the Harbour. Our findings indicate substantial foregone opportunities for pleasure boating in the Bay. We do not have evidence in this Report that these foregone opportunities exceed on one less than the values associated with the alternative uses of the Bay, especially for waste disposal.

At the root of the institutional arrangements for pleasure boating

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45. More precisely, the marginal value of one use should equal the marginal value of all other uses.

management for Hamilton Harbour is the constitutional and statute law that grants public ownership and control of the uses of the Harbour to a number of public agencies. These public agencies set the priorities for alternative uses, except in the case of conflict between shipping and navigation and other uses of the Harbour, when the courts have intervened to establish the paramountcy of shipping and navigation. At current usage rates for pleasure boating and given current regulations for "rules of the road" and other comparable matters, there is little conflict between the demands of commercial shipping and recreational boating. There is a long history of conflict, however, between recreational boating and waste disposal, and public agencies have resolved this conflict in favour of waste disposal interests.[46]

The converse of our conclusion that public agencies have determined the priorities amongst uses, and placed recreational boating as the lowest of the three priorities with commercial shipping and navigation and also waste disposal, is that recreational boaters themselves have highly attenuated property rights in access to and enjoyment of the waters of the Bay. With the exception of the limited property rights available for rpurchase of moorages at La Salle Park, recreational boaters must rely on public agencies to negotiate on their behalf with other public agencies involved in the management of alternative uses. Again, and in an historical view, public agencies have been reluctant to press the claims of recreationists. The interest of the City of Hamilton in developing the "Lax Property" as a recreational site may presage a modest change in this historical uninterest.

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46. Sproule-Jones, An Historical Profile ..., op. cit.

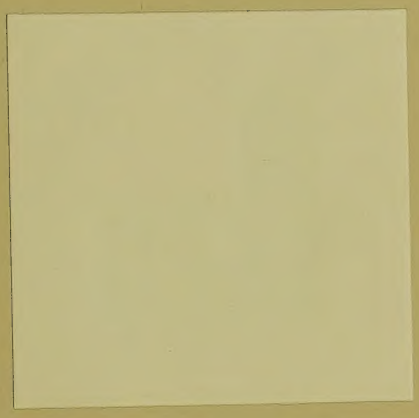
This Report details some of the consequences of the institutional arrangements for recreational boating in the Harbour. Some six marinas with 681 slips and four boat ramps form the core of the existing boating facilities, and the absence of substantial waiting lists for moorage rentals is the best indicator of a sufficiency of rental berths. The market for slip ownerships suggests, however, that expansion of private ownership rather than rentals is a more feasible response to potential demand for increased pleasure boating. Current rather than potential facilities afford some 265,000 annual boating opportunities on the Bay.

We calculated the economic impact of sailing and motorboating, and estimated that approximately $9 million is the income generated from these activities, leading to the employment of almost 800 persons in direct and supporting roles. However, we also calculated that over $14 million in total income and some 1300 jobs are lost because of current arrangements for this competing use of the Harbour. Those represent substantial opportunities foregone.

Any comprehensive reform of pleasure boating activities in the Harbour must address the problem of attenuated property rights for pleasure boaters of all kinds. Pleasure boaters are largely unorganized, possess limited rights of access, moorage and use of the waters, and do not enter directly into negotiations with the major regulators of commercial shipping and navigation (the Hamilton Harbour Commissioners) or waste disposal interests (the Ontario Ministry of the Environment). New Provincial legislation would be required to alter these arrangements.

A more modest step toward reform would see one or more appropriate agencies (such as the Hamilton Harbour Commissioners, the Hamilton-Wentworth Regional Conservation Authority, and the Cities of

Hamilton and Burlington) co-operate to form a Pleasure Boating Council with membership from owners of all types of craft and from marina interests. This Council could help organize owners, clubs and marina interests to lobby public agencies to redress the current accommodation of multiple uses. While the economic impacts of such developments appear positive, there may well be more considerable and positive environmental and social impacts associated with such moves.



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